



# ADA\* and Resurfacing

*\* Americans with Disabilities Act*



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# **Department of Justice/ Department of Transportation Joint Technical Assistance**

Title II of the Americans with Disabilities Act (ADA)  
Requirements to Provide Curb Ramps when  
Streets, Roads or Highways are  
Altered through Resurfacing.  
(Effective: 8/8/2013)

# Outline

- Background
- Joint DOJ/DOT Technical Assistance
- Alterations vs. Maintenance
- Where curb ramps
- When curb ramps – Alterations
- When not curb ramps – Maintenance
- Examples of Each
- Crosswalks

# Joint TA: DOJ & DOT!

- Resurfacing and Curb Ramps
  - When curb ramps are required & when they are not
- Clarification of existing regulations:
  - 28 CFR 35.151, "alterations require the inclusion of accessible features"
- New "**Joint Technical Assistance**"\*
  - What is an 'alteration', and
  - What is 'maintenance'

\* DOJ Attorneys & DOT Engineers finally agree.





U.S. Department of Justice  
Civil Rights Division  
Disability Rights Section



U.S. Department of Transportation  
Federal Highway Administration

## Department of Justice/Department of Transportation Joint Technical Assistance<sup>1</sup> on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing

Title II of the Americans with Disabilities Act (ADA) requires that state and local governments ensure that persons with disabilities have access to the pedestrian routes in the public right of way. An important part of this requirement is the obligation whenever streets, roadways, or highways are altered to provide curb ramps where street level pedestrian walkways cross curbs.<sup>2</sup> This requirement is intended to ensure the accessibility and usability of the pedestrian walkway for persons with

[www.fhwa.dot.gov/civilrights/programs/doj\\_fhwa\\_ta.cfm](http://www.fhwa.dot.gov/civilrights/programs/doj_fhwa_ta.cfm)

An alteration is a change in the physical condition, configuration, or design of all or part of a building or facility.<sup>3</sup> Alterations of streets, roads, or highways, such as filling potholes, are not alterations. Rehabilitation, resurfacing, widening, and projects of similar nature on streets, roads, or highways, such as filling potholes, are not alterations.

Without curb ramps, sidewalk travel in urban areas can be dangerous, difficult, or even impossible for people who use wheelchairs, scooters, and other mobility devices. Curb ramps allow people with mobility disabilities to gain access to the sidewalks and to pass through center islands in streets. Without these individuals are forced to travel in streets and roadways and are put in danger or are unable to reach their destination; some people with disabilities may simply choose not to leave their homes or communities.

ADA it triggers the obligation to... Kinney v.

# Part 1: Background *(i.e., Boring legal stuff)*

- Title II of the Americans with Disabilities Act (ADA) requires that state and local governments ensure that persons with disabilities have access to the pedestrian routes in the public right of way.
- An important part of this requirement is the obligation whenever streets, roadways, or highways are altered to provide curb ramps where street level pedestrian walkways cross curbs.



# Background (cont.)

- This requirement is intended to ensure the accessibility and usability of the pedestrian walkway for persons with disabilities.
- Without curb ramps, sidewalk travel in urban areas can be dangerous, difficult, or even impossible for people who use wheelchairs, scooters, and other mobility devices.



# Background (cont.)

- Curb ramps allow people with mobility disabilities to gain access to the sidewalks and to pass through medians and islands in streets.
- Otherwise, these individuals are forced to travel in streets and roadways and are put in danger or are prevented from reaching their destination.
- Some people with disabilities may simply choose not to take this risk and will not venture out of their homes or communities.



# Background (cont.)

- Because resurfacing of streets constitutes an alteration under the ADA, it triggers the obligation to provide curb ramps where pedestrian walkways intersect the resurfaced streets.
  - See *Kinney v. Yerusalim*, 9 F 3d 1067 (3rd Cir. 1993).
- This obligation has been discussed in a variety of technical assistance materials published by the Department of Justice beginning in 1994.

# Background (cont.)

- Over the past few years, state and local governments have sought further guidance on the scope of the alterations requirement with respect to the provision of curb ramps when streets, roads or highways are being resurfaced.



# Background (cont.)

- These questions have arisen largely due to the development of a variety of road surface treatments other than traditional road resurfacing, which generally involved the addition of a new layer of asphalt.



# Background (cont.)

- Public entities asked the Department of Transportation and the Department of Justice to clarify whether particular road surface treatments fall within the ADA definition of alterations, which would require additional curb ramp work, or whether they should be considered maintenance that would not trigger the obligation to provide curb ramps.

# Background (cont.)

- This Joint Technical Assistance is intended to address some of those questions.

## Part 2:

- Exciting, 'technical' stuff!

# Where Curb Ramps are Required?

- Generally, curb ramps are needed wherever a sidewalk or other pedestrian walkway crosses a curb.
- Curb ramps must be located to ensure a person with a mobility disability can travel from a sidewalk on one side of the street, over or through any curbs or traffic islands, to the sidewalk on the other side of the street.
  - [www.dot.state.fl.us/rddesign/DS/17/STDs.shtm](http://www.dot.state.fl.us/rddesign/DS/17/STDs.shtm)
    - See: Index 304



# Where Curb Ramps are NOT Required?

- ADA does not require installation of ramps or curb ramps in the absence of a pedestrian walkway with a prepared surface for pedestrian use.
  - *(i.e., Where there are no sidewalks)*
- Nor are curb ramps required in the absence of a curb, elevation, or other barrier between the street and the walkway.
  - *(i.e., Where there are no curbs)*
- Don't forget that detectable warnings are required at all "blended transitions" – those places where the sidewalk and the road are at the same level (i.e., flush)

# Alterations vs. Maintenance

- An alteration is a change that affects or could affect the usability of all or part of a building or facility.
  - Alterations of streets, roads, or highways include activities such as reconstruction, rehabilitation, **resurfacing**, widening, and projects of similar scale and effect.
- Maintenance activities on streets, roads, or highways, such as filling potholes, are not alterations.

[www.ada.gov/regs2010/titleII\\_2010/titleII\\_2010\\_regulations.htm](http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm) - S. 35.151(b)(1)

## Prior to DOJ/DOT Agreement...

### MAINTENANCE

**USDOJ**

*Patching  
Potholes*

**USDOT**

*“Non-structural”  
resurfacing*

### ALTERATION

**USDOJ**

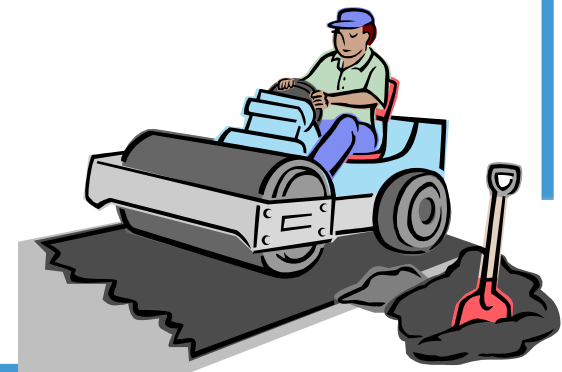
*Everything  
Else*

**USDOT**

*“Structural”  
resurfacing*

# When Curb Ramps are Required – Alterations

- Curb Ramps are required if resurfacing involves work on a street or roadway spanning from one intersection to another, and includes overlays of additional material to the road surface, with or without milling.
  - *Basically, if you're adding or replacing asphalt.*

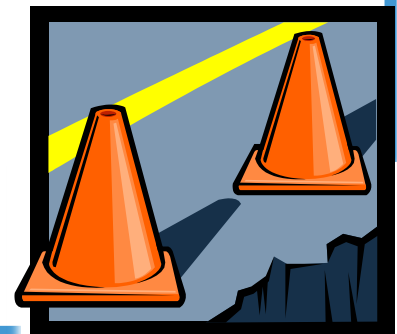


# Examples of Alterations:

- New layer of asphalt
  - Reconstruction & Rehabilitation
    - Mill-and-fill
      - Open-graded surface course
        - Micro-surfacing/Thin-lift overlays
          - Cape seals
            - In-place asphalt recycling
              - New construction
                - Etc.

# When Curb Ramps are not Required – Maintenance

- Treatments that serve solely to seal and protect the road surface, improve friction, and control splash and spray are considered to be maintenance because they do not significantly affect the public's access to or usability of the road.
  - *Basically, if you're just coating the surface and not adding asphalt.*



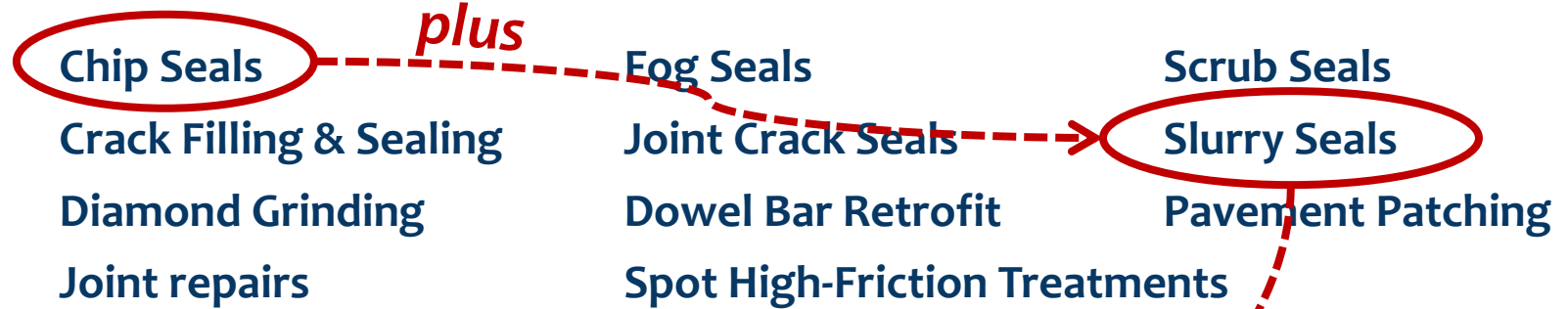
# Examples of Maintenance

- Painting or striping lanes
- Crack filling & sealing
- Surface sealing
- Chip seals
- Slurry seals
- Fog seals
- Scrub sealing
- Joint repairs
- Dowel bar retrofit
- Spot high-friction treatments
- Diamond grinding
- Pavement patching
- Pot-hole repairs
- Etc.



# After to DOJ/DOT Agreement...

## MAINTENANCE



## ALTERATION

Addition of New Layer of Asphalt

**Cape Seals**

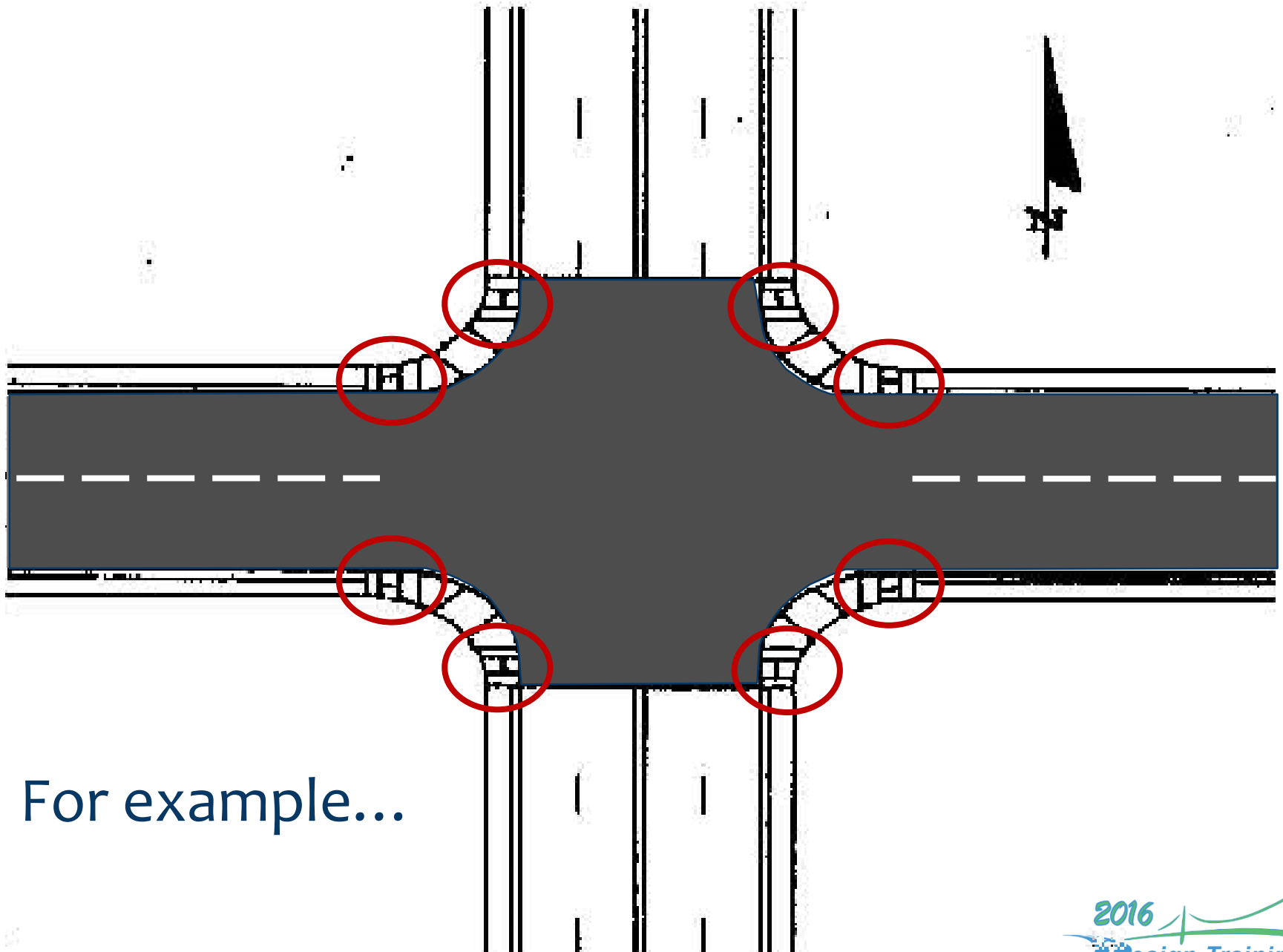
Hot In Pl

**Caution:**

In some cases, the combination of several maintenance treatments occurring at or near the same time may qualify as an alteration and would trigger the obligation to provide curb ramps.

3-R

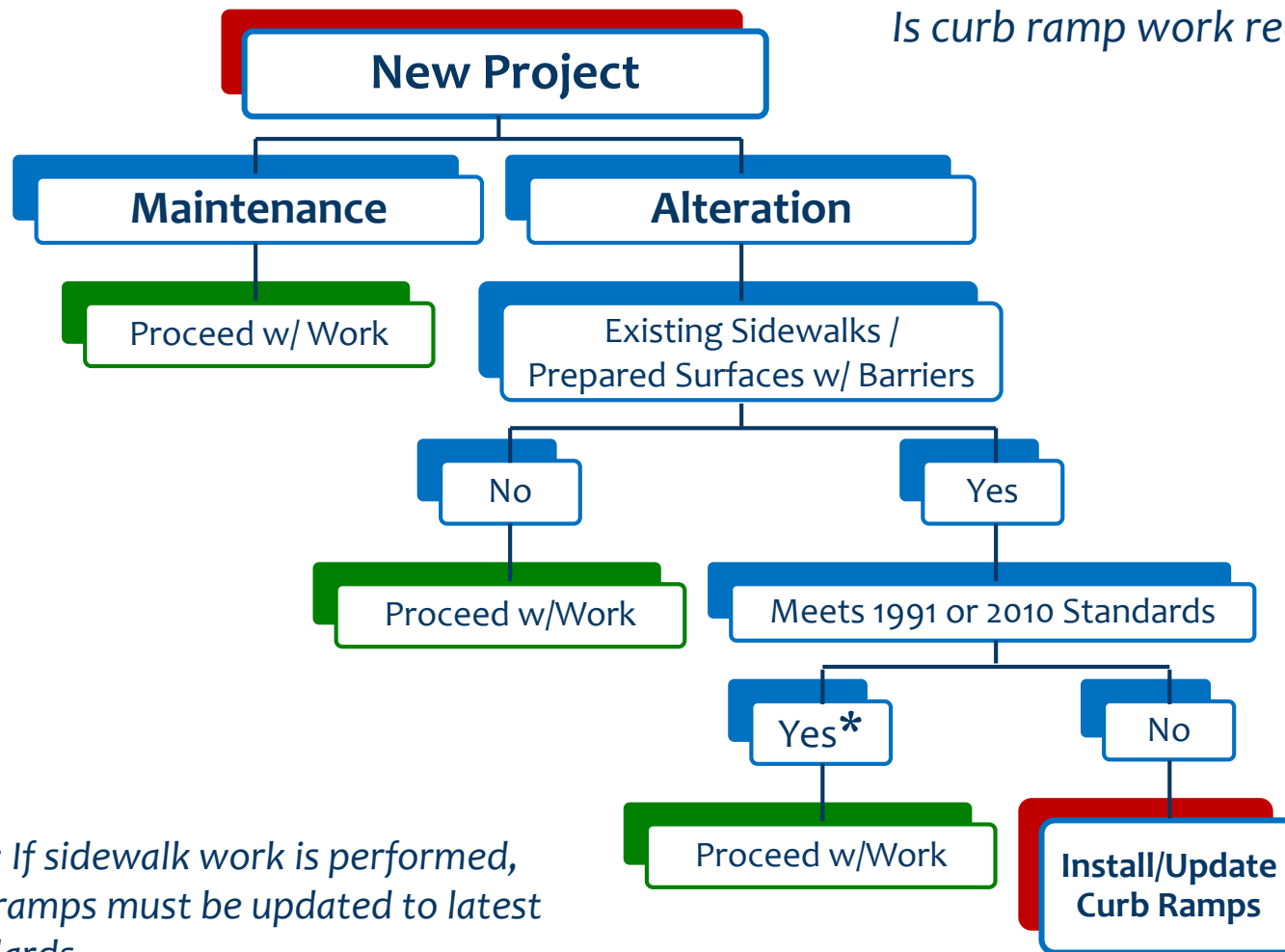
Graded Surface Course



For example...

# Decision Process

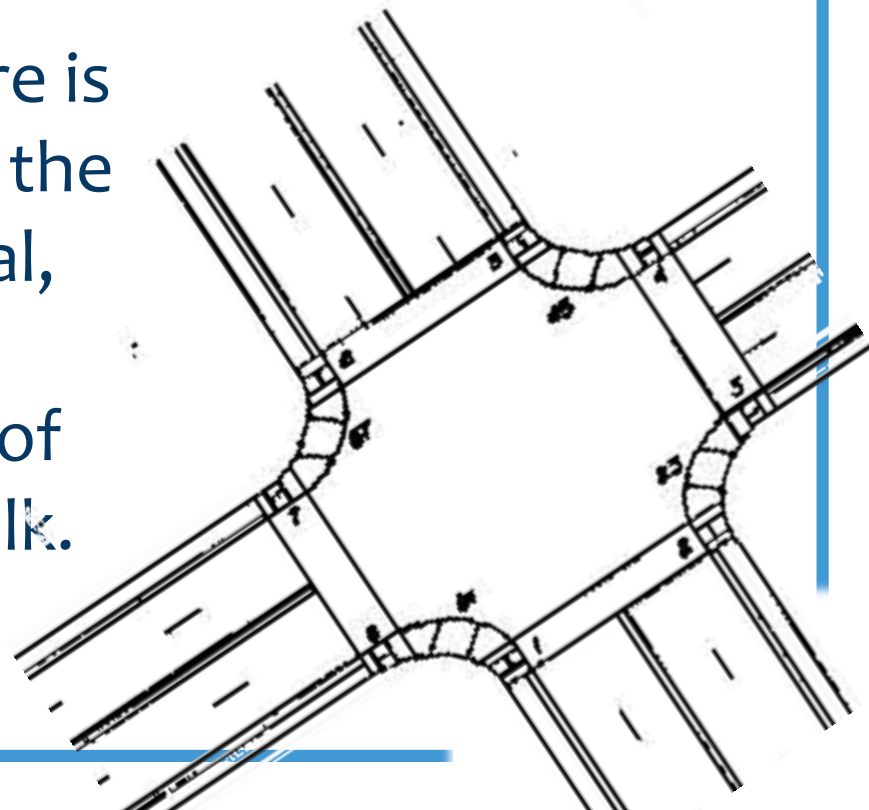
*Is curb ramp work required?*

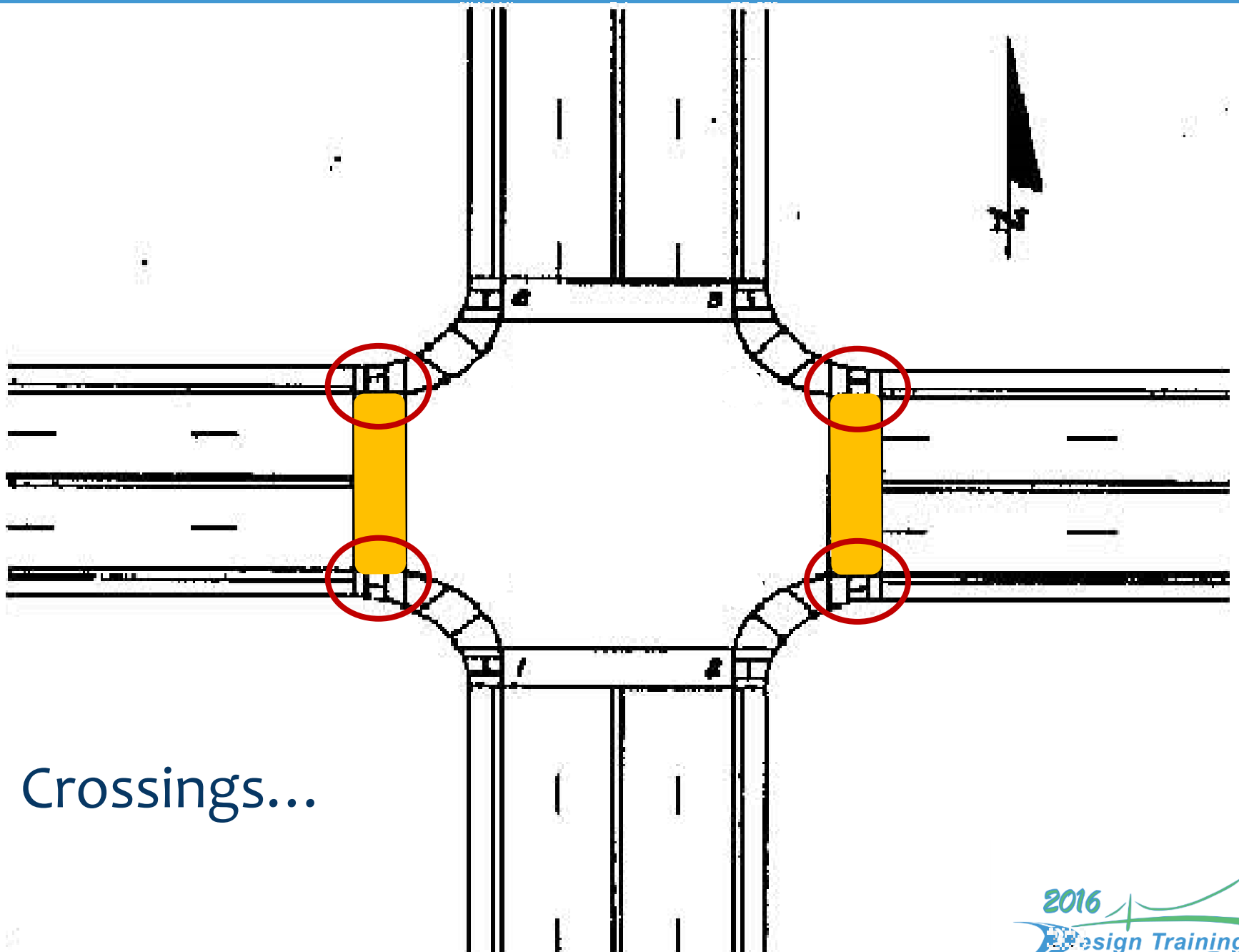


\* *NOTE: If sidewalk work is performed, curb ramps must be updated to latest standards.*

# What About Crosswalks?

- Crosswalks constitute distinct elements of the right-of-way intended to facilitate pedestrian traffic.
- Regardless of whether there is curb-to-curb resurfacing of the street or roadway in general, resurfacing of a crosswalk also requires the provision of curb ramps at that crosswalk.





Crossings...

# Please Note:

- This TA **does not** describe new requirements from DOJ or DOT.
- This TA **does not** change Florida DOT policy.
  - (See next slides)
- ***This is a clarification of current requirements.***

# FDOT Pavement only Projects

- ***Plans Preparation Manual (PPM)***
  - Chapter 25 – RRR Projects
  - Refers to Work Program Instructions Chapter 28
- ***Work Program Instructions (WPI)***
  - Chapter 28 - Resurfacing
  - Describes inclusion of ADA
    - (See next slide)

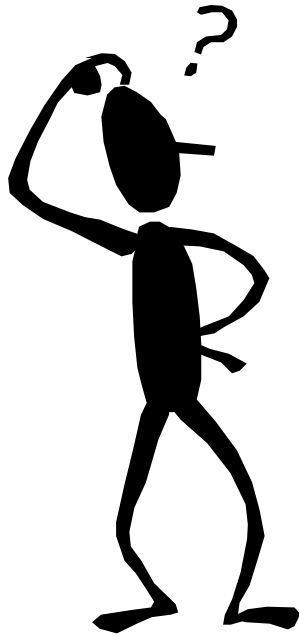


# FDOT Pavement only Projects

- **WPI** – Chapter 28.2
  - For pavements that are in good structural condition, but deficient due to ride only, . . . the district design engineer may decide to only fix the ride deficiency, **meet all American with Disabilities Act (ADA) requirements** and not resurface the entire roadway segment.

# FDOT Pavement only Projects

- **WPI** – Chapter 28.5
  - Resurfacing projects that . . . have been determined not to need an increase in structural capacity to achieve the required minimum pavement design life, may be designated as “maintenance resurfacing” projects . . . .
  - These projects shall be limited in scope to the items needed to address the functional rehabilitation of the pavement and installation/rehabilitation of ADA curb ramps . . . .



Questions?



# Resources



## U.S. Access Board

- Accessibility Guidelines - ADAAG
- [www.access-board.gov](http://www.access-board.gov)



## U.S. Dept. of Justice - ADA

- Accessibility Standards for Facilities & Sites
- [www.ada.gov](http://www.ada.gov)



## U.S. Dept. of Transportation – FHWA

- Accessibility Guidance & Standards for Public Rights of Way
- [www.dot.gov/citizen\\_services/disability/disability.html](http://www.dot.gov/citizen_services/disability/disability.html)



## Florida Dept. of Transportation - FDOT

- ADA information on Website
- <http://www.dot.state.fl.us/projectmanagementoffice/ADA/>



For More Information, Contact:

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**DOJ/DOT Joint Technical Assistance (06/13):**

[www.fhwa.dot.gov/civilrights/programs/doj\\_fhwa\\_ta.cfm](http://www.fhwa.dot.gov/civilrights/programs/doj_fhwa_ta.cfm)

**Q & A on the DOJ/DOT Joint TA (12/15):**

[www.fhwa.dot.gov/civilrights/programs/ada\\_resurfacing\\_qa.cfm](http://www.fhwa.dot.gov/civilrights/programs/ada_resurfacing_qa.cfm)

# Thank You!

***Merci! Todah Rabbah***

***Arigato!***

***Dhanya Vaad!***

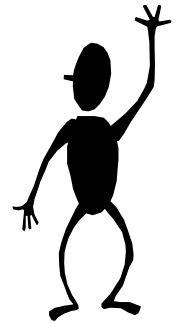
***Xie Xie!***

***Gracias!***

***Shokran!***

***Danke!***

***LIVE LONG AND PROSPER!***





Well Done!